

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

|                                |   |                                   |
|--------------------------------|---|-----------------------------------|
| JOHN MINCH,                    | ) |                                   |
|                                | ) |                                   |
| Petitioner,                    | ) | Civil Action No. 23-806           |
|                                | ) |                                   |
| v.                             | ) | District Judge David S. Cercone   |
|                                | ) | Magistrate Judge Maureen P. Kelly |
| SUPERINTENDENT LONNIE OLIVER;  | ) |                                   |
| ATTORNEY GENERAL OF THE STATE  | ) | Re: ECF No. 3                     |
| OF PENNSYLVANIA; and           | ) |                                   |
| DISTRICT ATTORNEY OF ALLEGHENY | ) |                                   |
| COUNTY,                        | ) |                                   |
|                                | ) |                                   |
| Respondents.                   | ) |                                   |

**MEMORANDUM ORDER**

John Minch (“Petitioner”) is a state prisoner proceeding *pro se* in this matter. In his Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (the “Petition”), ECF No. 1, Petitioner seeks federal habeas relief from his 2013 homicide conviction in the Court of Common Pleas of Allegheny County, Pennsylvania, at Case No. CP-02-CR-8111-2009. Id. at 1

On June 20, 2023, United States Magistrate Judge Maureen Kelly issued a Report and Recommendation recommending that this case be dismissed pre-service, as every claim raised by Petitioner either was time-barred under the applicable statute of limitations, or was not cognizable in a federal habeas petition. See ECF No. 3 at 11. See also 28 U.S.C. §§ 2244(d) and 2254(a).

Petitioner timely filed Objections, which were received on July 7, 2023. ECF No. 4. The substantive bases for the Objections largely were addressed in the Report and Recommendation. Even though it was addressed in the Report and Recommendation, it is worth repeating that Grounds One through Four are untimely even if this the Petition is deemed filed on the date that it

was signed, rather than the date it was mailed. Compare ECF No. 3 at 10 and n. 4 with ECF No. 4 at 2.

The undersigned further notes that Petitioner concedes in his Objections that Ground Five does not provide a basis to grant habeas relief. ECF No. 4 at 4. Plaintiff asserts in his Objections that Ground Five is meant to support equitably tolling the statute of limitations. Id. But as the Magistrate Judge correctly concluded, even with the application of equitable tolling, the Petition still is untimely. ECF No. 3 at 9-10.

Therefore, after *de novo* review of the pleadings and documents in the case, together with the Petition, ECF No. 1, and the Report and Recommendation, ECF No. 3, and Petitioners Objections, ECF No. 4, the following order is entered:

AND NOW, this 24<sup>th</sup> day of July, 2023,

IT IS HEREBY ORDERED that this case is DISMISSED.

IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

IT IS FURTHER ORDERED the Report and Recommendation, ECF No. 3, as augmented by this Memorandum Order, is adopted as the opinion of this Court.

IT IS FURTHER ORDERED that, pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, if Petitioner wishes to appeal from this Order he must file a notice of appeal within 30 days, as provided in Rule 3 of the Federal Rules of Appellate Procedure, with the Clerk of Court, United States District Court, 700 Grant Street, Room 3110, Pittsburgh, PA 15219. Petitioner is referred to Rule 22 of the Federal Rules of Appellate Procedure and to 3d Cir. L.A.R. 22.1 for the timing requirements for applying for a certificate of appealability from the Court of

Appeals (available at [https://www2.ca3.uscourts.gov/legacyfiles/2011\\_LAR\\_Final.pdf](https://www2.ca3.uscourts.gov/legacyfiles/2011_LAR_Final.pdf)).

s/David Stewart Cercone

David Stewart Cercone

Senior United States District Judge

cc: The Honorable Maureen P. Kelly  
United States Magistrate Judge

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